

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KIMBERLY RODRIGUEZ,

Plaintiff,

-against-

NEW YORK BARIATRIC GROUP, LLC, LONG
ISLAND MINIMALLY INVASIVE SURGERY,
P.C. d/b/a/ NEW YORK BARIATRIC GROUP,
NYBG MANAGEMENT AGGREGATOR, LLC,
NYBG HOLDINGS, LLC, DR. SHAWN
GARBER M.D. and VIJAY BACHANI,

Defendants.

AZRACK, United States District Judge:

Kimberly Rodriguez (“Plaintiff”) brought this action against New You Bariatric Group, LLC, Long Island Minimally Invasive Surgery, P.C. d/b/a/ New York Bariatric Group, NYBG Management Aggregator, LLC, NYBG Holdings, LLC, Dr. Shawn Garber M.D., and Vijay Bachani (“Defendants”) alleging several federal and state employment discrimination claims and a breach of contract claim. (ECF No. 1.) On March 10, 2023, Defendants moved to dismiss Plaintiff’s Complaint on grounds of forum non conveniens. (ECF No. 14.) On October 18, 2023, this Court referred the motion to Magistrate Judge Steven L. Tiscione for a Report and Recommendation (“R&R”). (See Electronic Order dated Oct. 18, 2023.)

Before the Court today is a R&R from Judge Tiscione (ECF No. 17), which recommends that Defendants’ motion to dismiss be denied, and that Defendants’ request for sanctions be denied (ECF No. 14.) No objections to the R&R have been filed; the time for doing so has expired. For the reasons stated below, the R&R is adopted in its entirety.

For Online Publication Only

ORDER

22-cv-5400 (JMA) (ST)

**FILED
CLERK**

8:01 am, Mar 29, 2024

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

I. LEGAL STANDARD

A district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); see also FED. R. CIV. P. 72(b)(3); Grassia v. Scully, 892 F.2d 16, 19 (2d Cir. 1989). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” Smith v. Campbell, 782 F.3d 93, 102 (2d Cir. 2015) (quoting Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002)); see also Phillips v. Long Island R.R. Co., 832 F. App’x 99, 100 (2d Cir. 2021) (same). In the absence of any objections, “the district court need only satisfy itself that there is no clear error on the face of the record.” Estate of Ellington ex rel. Ellington v. Harbrew Imports Ltd., 812 F. Supp. 2d 186, 189 (E.D.N.Y. 2011) (internal citations omitted). Clear error will be found only when, upon review of the entire record, the Court is “left with the definite and firm conviction that a mistake has been committed.” United States v. Snow, 462 F.3d 55, 72 (2d Cir. 2006) (quoting United States v. Garcia, 413 F.3d 201, 222 (2d Cir. 2005)).

II. DISCUSSION

The Court has carefully reviewed the record and the unopposed R&R for clear error and, finding none, hereby adopts Judge Tiscione’s well-reasoned and forty paged R&R in its entirety as the opinion of the Court.

III. CONCLUSION

Accordingly, Defendants’ motion to dismiss is DENIED, and Defendants’ request for sanctions is DENIED.

SO ORDERED.

Dated: March 29, 2024

Central Islip, New York

/s/ JMA
JOAN M. AZRACK
UNITED STATES DISTRICT JUDGE